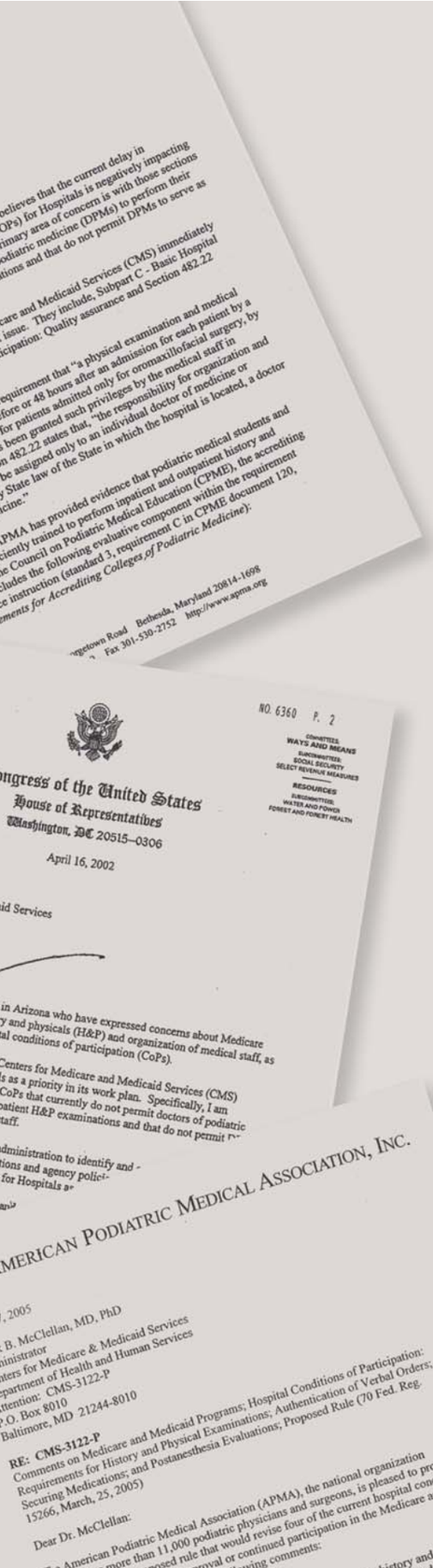
believes that the current delay in
OPs) for Hospitals is negatively impacting
imary area of concern is with those sections
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tions and that do not permit DPMs to serve as

care and Medicaid Services (CMS) immediately
issue. They include, Subpart C - Basic Hospital
ication: Quality assurance and Section 482.22

equirement that "a physical examination and medical
fore or 48 hours after an admission for each patient by a
for patients admitted only for oromaxillofacial surgery, by
been granted such privileges by the medical staff in
n 482.22 states that, "the responsibility for organization and
be assigned only to an individual doctor of medicine or
State law of the State in which the hospital is located, a doctor
icine."

PMA has provided evidence that podiatric medical students and
iently trained to perform inpatient and outpatient history and
e Council on Podiatric Medical Education (CPME), the accrediting
cludes the following evaluative component within the requirement
e instruction (standard 3, requirement C in CPME document 120,
ments for Accrediting Colleges of Podiatric Medicine):

ngetown Road Bethesda, Maryland 20814-1698
Fax 301-530-2752 http://www.apma.org

NO. 6360 P. 2

COMMITTEES:
WAYS AND MEANS
SUBCOMMITTEE:
SOCIAL SECURITY
SELECT REVENUE MEASURES

RESOURCES
SUBCOMMITTEE:
WATER AND POWER
FOREST AND FOREST HEALTH

ongress of the United States
House of Representatives
Washington, DC 20515–0306

April 16, 2002

id Services

in Arizona who have expressed concerns about Medicare
y and physicals (H&P) and organization of medical staff, as
al conditions of participation (CoPs).

Centers for Medicare and Medicaid Services (CMS)
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CoPs that currently do not permit doctors of podiatric
atient H&P examinations and that do not permit
staff.

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AMERICAN PODIATRIC MEDICAL ASSOCIATION, INC.

, 2005

B. McClellan, MD, PhD
inistrator
nters for Medicare & Medicaid Services
partment of Health and Human Services
ttention: CMS-3122-P
P.O. Box 8010
Baltimore, MD 21244-8010

RE: CMS-3122-P
Comments on Medicare and Medicaid Programs; Hospital Conditions of Participation:
Requirements for History and Physical Examinations; Authentication of Verbal Orders;
Securing Medications; and Postanesthesia Evaluations; Proposed Rule (70 Fed. Reg.
15266, March, 25, 2005)

Dear Dr. McClellan:

The American Podiatric Medical Association (APMA), the national organization
representing more than 11,000 podiatric physicians and surgeons, is pleased to provide
comments on the proposed rule that would revise four of the current hospital conditions
ion (CoPs) for approval or continued participation in the Medicare and
. We offer the following comments:

completion of a history and physical
port the proposed revision to
ical history and
defined in

The Power of "YOU" How APMA Membership and the Podiatric Profession Brought About Real Change

By Rodney D. Peele, Esq.

You did it! It may have taken many years and much hard labor, but your efforts brought about real change. You: the APMA member and doctor of podiatric medicine.

As of January 26, 2007, the Centers for Medicare & Medicaid Services (CMS) will require hospitals, as a condition of their participation (CoP) in Medicare, to allow DPMs to independently perform medical histories and physical examinations (H&Ps) for the patients they admit.

As *Time* magazine wrote when naming "You" the Person of the Year for 2006, this is "a story about community and collaboration on a scale never seen before."

As far back as August 1977, the Council on Podiatry Education (now CPME, or the Council) Document 320 said that first-year podiatry residents should participate in recording medical histories and physicals. Fifteen years later, in 1992, Medicare was still not convinced that podiatrists were adequately trained to perform H&Ps. Medicare then took another 15 years to give DPMs permission to perform H&Ps.

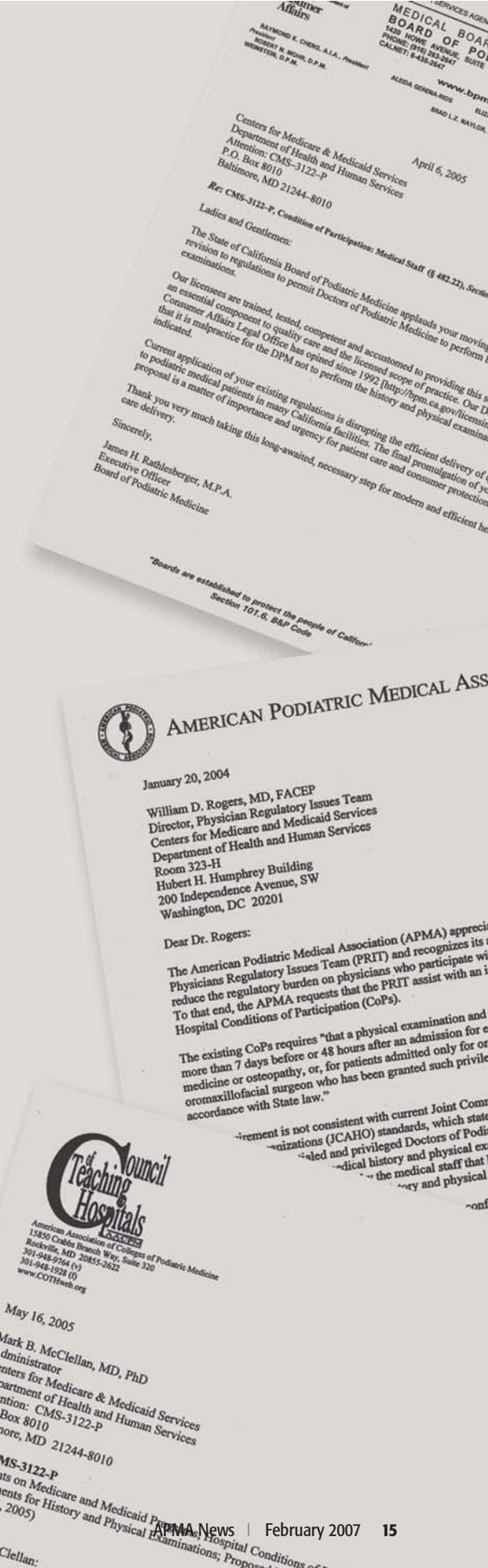
"I'm in awe of the amount of work and effort that a lot of my predecessors on the Health Policy Committee and past presidents and others put into trying to resolve this problem," said APMA Vice President Ross E. Taubman, DPM, chair of the Health Policy Committee since 2004.

"Ultimately what worked was the persistence," said APMA Past President (2004) Lloyd S. Smith, DPM, who was personally involved with meetings at the Medicare agency on the H&P regulations during his long tenure as chair of the Health Policy Committee. "This is a major accomplishment and a major step forward. It furthers our independence in the healthcare community."

You, the podiatric medical community, collaborated, fought, pushed, rallied, counterattacked, and worked together to learn how to perform H&Ps, to do them well, and to prove that DPMs *should* do them.

Some of you convinced legal authorities a quarter-century ago. In California, Legal Opinion 82-31 established that a DPM may perform a complete H&P on his or her patients admitted to a licensed general acute care facility. In August 1983, the state Board of Podiatric

The Power of "You" continued on page 16


Affairs

MEDICAL BOARD
BOARD OF PO
RAYMOND K. CHENG, A.L.A., President
ROBERT M. MOHR, D.P.M.
WEINSTEIN, D.P.M.
3420 ROHE AVENUE, SUITE
PHONE: (916) 263-2647
CALNET: 8-456-2647
www.bpm
ALIESA GERBA, BOS
BRAD L.Z. NAYLOR,

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3122-P
P.O. Box 8010
Baltimore, MD 21244-8010

April 6, 2005

Re: CMS-3122-P, Condition of Participation: Medical Staff (§ 482.22), Sectio

Ladies and Gentlemen:

The State of California Board of Podiatric Medicine applauds your moving
revision to regulations to permit Doctors of Podiatric Medicine to perform
examinations.

Our licenses are trained, tested, competent and accustomed to providing this
as an essential component to quality care and the licensed scope of practice. Our D
Consumer Affairs Legal Office has opined since 1992 [http://bpm.ca.gov/licensi
that it is malpractice for the DPM not to perform the history and physical examin
indicated.

Current application of your existing regulations is disrupting the efficient delivery of
to podiatric medical patients in many California facilities. The final promulgation of y
proposal is a matter of importance and urgency for patient care and consumer protection

Thank you very much taking this long-awaited, necessary step for modern and efficient he
care delivery.

Sincerely,

James H. Rathlesberger, M.P.A.
Executive Officer
Board of Podiatric Medicine

"Boards are established to protect the people of Californ
Section 101.6, B&P Code

AMERICAN PODIATRIC MEDICAL ASS

January 20, 2004

William D. Rogers, MD, FACEP
Director, Physician Regulatory Issues Team
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 323-H
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Dr. Rogers:

The American Podiatric Medical Association (APMA) appreci
Physicians Regulatory Issues Team (PRIT) and recognizes its
reduce the regulatory burden on physicians who participate wi
To that end, the APMA requests that the PRIT assist with an i
Hospital Conditions of Participation (CoPs).

The existing CoPs requires "that a physical examination and
more than 7 days before or 48 hours after an admission for e
medicine or osteopathy, or, for patients admitted only for or
oromaxillofacial surgeon who has been granted such privile
accordance with State law."

irement is not consistent with current Joint Comm
nizations (JCAHO) standards, which state
led and privileged Doctors of Podi
dical history and physical ex
the medical staff that
ory and physical

Council on Teaching Hospitals
American Association of Colleges of Podiatric Medicine
15850 Crabbs Branch Way, Suite 320
Rockville, MD 20855-2022
301-948-9764 (v)
301-948-1928 (f)
www.COTHweb.org

May 16, 2005

Mark B. McClellan, MD, PhD
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3122-P
P.O. Box 8010
Baltimore, MD 21244-8010

RE: CMS-3122-P
Comments on Medicare and Medicaid P
Requirements for History and Physical Examinations; Proposed Rule (70 Fed. R
March, 25, 2005)

Dear Dr. McClellan:

On behalf of the Council
Colleges of Podiatric

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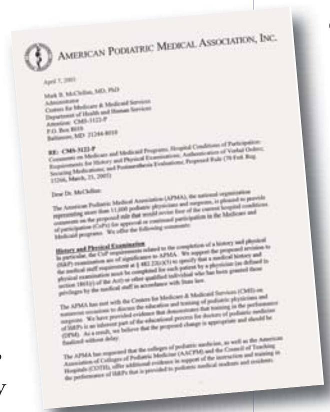


Medicine concurred, stating, "While a podiatrist may not treat ailments and physical conditions beyond his or her legally authorized scope of practice, a podiatrist may perform a complete history and physical as an adjunct to podiatric medical care and may report any symptoms and abnormalities observed."

That year, Medicare almost reached the same conclusion. For hospitals to receive payment from Medicare, they must satisfy certain conditions. Congress gives the Medicare agency the authority to set the conditions and determine which hospitals meet the requirements. In January 1983, Medicare proposed changing its CoPs to allow any physician (including podiatrists) on medical staff to perform H&Ps. CMS, then known as the Health Care Financing Administration (HCFA), received an extraordinary 36,300 comments on the proposed rule, including feedback from APMA.

When the final rule was announced in June 17 of 1986, 20 years after the CoPs were first established in 1966, Medicare narrowed the field for H&Ps to MDs and DOs. It would be 20 years before Medicare would revise the CoPs again.

In explaining its decision at the time, HCFA said it would be confusing to allow anyone defined as a physician in 1861(r) to perform H&Ps. Apparently there was some confusion in California. In January 1984, the legal office of the California Department of Consumer Affairs issued a clarification to correct some misinterpretations of the 82-31 opinion that would have been detrimental to DPMs.

So then you, the members—especially from California, where Medicare conflicted with state law

PODIATRISTS RAISED THE ISSUE with their state societies, which in turn pressed APMA to get involved on a national level since the roadblock was a federal regulation.

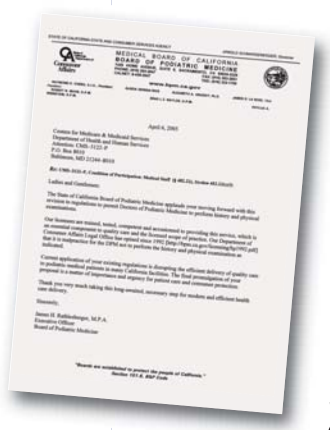
that allowed DPMs to perform H&Ps—began encouraging APMA to get the Medicare rules changed. Podiatrists raised the issue with their state societies, which in turn pressed APMA to get involved on a national level since the roadblock was a federal regulation.

Project 2000, drafted in the mid-1980s, was one of the first times the profession clearly stated its belief that the practice of podiatric medicine included performing complete histories and physicals of patients. Article 1, Subparagraph 1.2 of the project's report stated: "The scope of practice for podiatry should include general medical histories and physicals . . . when related to pre-admission to hospitals for podiatric procedures."

"In Project 2000, we felt we had to demonstrate standardization in training and show other professionals we were competent," said APMA Past President (1998) Terence B. Albright, DPM, now Dean of the Scholl College of Podiatric Medicine at Rosalind Franklin University.

In light of the Project 2000 recommendation, the 1984 APMA House of Delegates adopted Resolution 45-84, submitted by the California state association. The HOD resolved that every patient admitted to a hospital should receive an H&P from a DPM, MD, DO, or DDS.

In 1985, the House of Delegates approved Resolution 22-85, which also was submitted by the California component. It affirmed APMA policy that admitting practitioners, including DPMs, MDs, DOs, and DDSs, should perform H&Ps for the patients they admit to hospitals.



"The membership spoke clearly. This is what we wanted," said Past President (1997) Marc D. Lenet, DPM. "When we have the desire, the demonstrable expertise and training, and we're able to put together a plan, time will enable it to occur."

"[The recent revision in 2006 is] rewarding, and it demonstrates how challenging this process is," Dr. Smith said. "It can take 10 or 20 years to move these things along, and you have to have leaders who are unwilling to quit."

In the 1980s, APMA began meeting with Medicare officials about this issue, and CPMA pressed the case on the state level. Richard B. Viehe, DPM, then president of the California Podiatric Medical Association (CPMA) and later president of APMA (in 2002), corresponded with what is now known as the Joint Commission on Accreditation of Heathcare Organizations (JCAHO), and with the California Department of Health Services.

In January of 1986, Paul J. Gould answered Dr. Viehe on behalf of the California government and confirmed that a podiatrist in that state could perform H&Ps. Later, in February, Dennis S. O'Leary, MD, then president-designate of JCAHO, sent JCAHO's response to Dr. Viehe that the California law appeared to be consistent, if not entirely complementary, with Joint Commission standards.

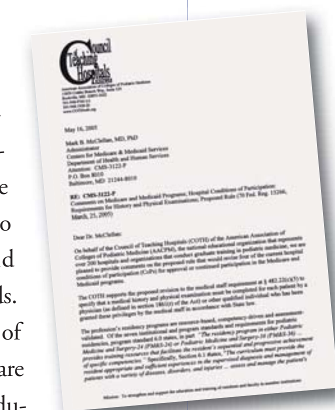
Dr. Viehe would become a key player in the H&P battle for 20 years. He made H&Ps the primary goal of his tenure as APMA president. Obviously, he is pleased with the outcome.

"I'm ecstatic, delighted," Dr. Viehe said. "People have no idea how important this is going to be for podiatric medicine from here on out. H&Ps have been mandated by the Council on Podiatric Medical Education for years, but we haven't been able to practice it.

"This has big significance for podiatric medicine. It adds to the credibility of podiatry as a profession. I can't think of anything much more important than having the basic right to evaluate your patient."

In August 1988, Teresa Hawkes, from the California Department of Health Services, wrote to Robert G. Walters, Esq., an attorney for CPMA, that the state not only enforces state statutes and regulations, but it also acts as an agent of the federal government to validate facilities' compliance with Medicare CoPs. Although state law permitted DPMs to perform H&Ps, the state agency would report a deficiency to the federal government if the H&Ps at hospitals that participate in Medicare are not performed by MDs or DOs.

APMA's president in 1988, David A. Stone, DPM, formally wrote to HCFA in October of that year about the discrepancy between state scopes of practice and the Medicare regulation. In November, Kathleen Buto, acting director of the HCFA Bureau of Eligibility, Reimbursement, and Coverage, responded that making exceptions for states where DPMs were allowed to perform H&Ps would lower Medicare standards. In addition, "Doctors of medicine or osteopathy are the individuals whose education and training appropriately qualify them" to perform H&Ps due to the necessity to review the whole medical status of a hospitalized patient.



APMA responded swiftly, asking its consultants at Health Policy Alternatives as well as the law firm Arent Fox (Arent, Fox, Kintner, Plotkin, & Kahn) for advice on legal, legislative, and administrative options to change HCFA's mind. HPA provided an eight-page memorandum to APMA in January of 1989, and in March, Arent Fox chimed in with an 11-page memo. These memos helped guide APMA's strategy for years to come.

In 1989, with the assistance of APMA legal counsel Werner Strupp, APMA prepared to seek a legislative solution to the Medicare problem. You, the members, especially those in California, contacted your federal legislators to change the law. APMA arranged meetings for key California legislators with some of their constituents who happened to be leaders of podiatric medicine.

Longtime APMA Director of Governmental Affairs John Carson and CPMA Past President Howard Sokoloff, DPM, met with Rep. Pete Stark (D-CA), then chair of the Health Subcommittee of the House Ways and Means Committee, about the problems in California. In February of 1990, Rep. Stark responded that he was having his staff investigate the issue.

Rep. Henry Waxman (D-CA), who was chairman of the Subcommittee on Health and the Environment for the Committee on Energy and Commerce in the House of Representatives, asked the federal Office of Technology Assessment (OTA) to review the education and training of podiatrists. Rep. Waxman met with Oliver S. Foster, DPM, in Los Angeles, and wrote to Dr. Viehe thanking him for a letter on the issue. This was an important initial step in proving to federal regulators that DPMs are trained to do H&Ps.

In May 1990, OTA policy analyst Robert McDonough, JD, MD, reported that, based on material APMA provided, the podiatrists may have the requisite training and experience to perform H&Ps. Later that month, Rep. Waxman wrote to HCFA asking for Administrator Gail R. Wilensky, PhD, to change Medicare policies, if warranted, after reviewing the competency of podiatrists to perform complete H&Ps. Less than two weeks later in June, Dr. Foster wrote to Rep. Waxman pledg-

The Power of "You" continued on page 18

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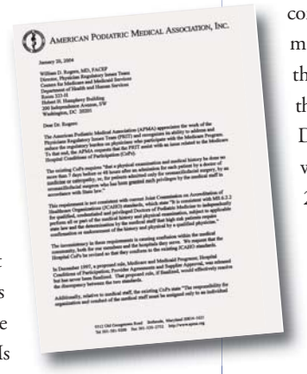
ing the profession's cooperation with Congress and the executive branch if required.


AMERICAN PODIATRIC MEDICAL ASSOCIATION, INC.

Meanwhile, the California Board of Podiatric Medicine obtained a legal opinion from the state's department of consumer affairs that reaffirmed the authority of DPMs to perform H&Ps. The state had previously reached that conclusion in 1982 (Legal Opinion 82-31) and, because there was no subsequent change in law or regulation, determined that the prior opinion remained valid. Also out west, Medicare's office in Region III determined in February 1991 that because DPMs were defined as physicians in 1861(r), DPMs were qualified to perform preoperative H&Ps (HSQ-R3 (37)).

In March of 1992, Kathleen Buto, then director of the Medicare Bureau of Policy Development, responded to Rep. Waxman. She acknowledged arguments by APMA and individual podiatrists to change the Medicare policy but concluded that no change was warranted.

Refusing to quit, you vowed to prove you had the training to do H&Ps, and APMA's fledgling Health Policy Committee took up the charge.

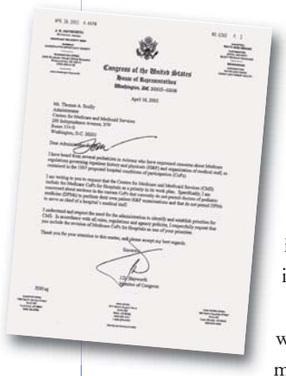
"Project 2000 has given us credibility, and the colleges have shown great effort to respond. As years go by, the educational process gets stronger and stronger," Dr. Lenet said. "I'm pleased with the evolutionary progress this profession has been able to enjoy, thanks to the good work by our association and the support from the colleges and affiliated groups."

In the summer of 1992, APMA contacted all the schools of podiatric medicine and queried them about their H&P training. As a result of that survey, Charles L. Jones, DPM, Dr. Albright, and Dr. Viehe, all of whom were involved with Project 2000 and who were or would become APMA presidents, recommended a resolution for the 1992 House of Delegates to urge CPME to modify its documents to reflect an expectation that graduates be knowledgeable and proficient in performing H&Ps.

REFUSING TO QUIT, you vowed to prove you had the training to do H&Ps, and APMA's fledgling Health Policy Committee took up the charge.

"We can't tell the Council what to do, but we can indicate a need," Dr. Viehe said.

"We were asked, what is our training?" Dr. Albright said. "This had to be dealt with in a manner we could prove our students were trained on H&Ps, that every graduated podiatric physician has been trained. We could document it and show the documentation to whoever asked, not just verbally state it."


Congress of the United States
House of Representatives
Washington, DC 20515-6106

That year, Dr. Viehe replaced Dr. Jones on the JCAHO Professional Technical Advisory Committee (PTAC), a position he would hold for a dozen years. His involvement with JCAHO was instrumental in getting JCAHO and CMS to give DPMs their due.

"I'd go to most of the meetings in Chicago and get to know the players personally," Dr. Viehe said. "I wrote letters, got APMA to write letters, gave them documentation."

The HOD passed that resolution (No. 14-92) for colleges of podiatric medicine to enhance the instruction and training of podiatric medical school students in performing H&Ps, and for CPME to revise its documents to reflect that such training is necessary. In 1993, the HOD passed another resolution for all residencies to also provide meaningful instruction on performing H&Ps and for CPME to continue to expect such instruction of all residency programs.

"There was a point when H&Ps became mandatory in all of the schools," Dr. Smith said. "Once we had that in our arsenal, it just became a matter of persistence with CMS. First, we had to have the credibility."

In January 1993, in response to a query, the administrator of Florida's Board of Podiatric Medicine wrote to Harold W. Vogler, DPM, that there is nothing in the podiatric medicine practice act that would prohibit a DPM from performing H&Ps. Dr. Vogler joined the

The Power of "You" continued on page 20

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list of longtime champions of this cause for the American College of Foot and Ankle Surgeons (ACFAS).

In November of that year, Medicare issued regulations that allowed a private accrediting body to deem hospitals to meet the Medicare CoPs if the institution meets the "equivalent" requirements of the accrediting body. Most hospitals affirm their Medicare participation by satisfying JCAHO standards, instead of having Medicare survey the facility. This eventually would ease the path for DPMs, but the primary Medicare roadblock remained so. In 1994, therefore, the House of Delegates passed Resolution 15-94 for APMA to continue the battle.

Medicare law required hospitals to permit any licensed practitioner allowed by state law to admit patients to do so, and required that every patient receive a comprehensive assessment at the time of admission. Section 1861(e)(4) of the Social Security Act requires every Medicare patient to be under the care of a physician, and Section 1861(r) defines physician to include DPMs, limited only by their scope of practice.

In February 1996, Dr. Viehe wrote to JCAHO about interpretations of JCAHO policy and provided examples of how the policy would be applied. In May of that year, Paul R. VanOstenburg, DDS, MS, director of the JCAHO department of standards, replied with encouraging information: If state law and hospital policy allowed DPMs to perform H&Ps, JCAHO would not penalize a hospital that permitted DPMs to perform them.

Other states began to follow California's lead in this multifaceted battle. In December 1996, the New Jersey Board of Medical Examiners deemed H&Ps to be within the scope of practice for DPMs.

APMA met with JCAHO again in late 1997 and continued to press HCFA. "I went to Board meetings over and over saying this has to be a legislative priority, and we need lobbying," Dr. Viehe said.

In December 1997, Medicare proposed the first changes to the CoPs since 1986. Among the many revisions, HCFA, in section 482.22(c)(5) of the U.S. Code of Federal Regulations, would essentially allow any practitioner to perform an H&P if state law and hospital policy permitted it. In other words, Medicare would let hospitals decide on their own, in accordance with state law, whether DPMs admitting patients could perform the initial comprehensive assessment of those patients. This change was among many proposed that winter, but, for reasons unrelated to the H&P provision, CMS never finalized the rule.

To issue (and change) federal regulations, U.S. government agencies first must publish the proposed changes, give the public a time to comment, and then publish the final regulations after taking the comments into consideration. Since no final rule was published, the proposal never took effect.

"I think we won in the early to mid-1990s. For 10 years, we've actually had them convinced," Dr. Smith said. "But political issues unrelated to podiatric medicine were keeping CMS from getting new CoPs out of the agency."

In July of 1998, Dr. Vogler, then chair of the ACFAS Professional Relations Committee, recommended some changes to the JCAHO standards to reflect more precisely current medical practice and the right of DPMs to perform independent H&Ps for their patients. APMA suggested a few modifications. ACFAS, through the personal relationships its members and staff had with JCAHO, would meet with JCAHO in 1999.

"ACFAS wanted to get involved, and we worked on issues jointly," said Dr. Viehe, who continued to sit on the PTAC. "Dr. Vogler was as persistent and determined as me."

Meanwhile, in the summer of 1998, the APMA HOD unanimously approved the recommendations of the Educational Enhancement Project (EEP). The EEP recommended that all DPMs be trained and competent in performing H&Ps. The profession reaffirmed its commitment to H&P education.

In July of 1999, the California Board of Podiatric Medicine corrected information supplied to a hospital in that state by an MD from Los Angeles. The doctor mistakenly suggested DPMs could not perform H&Ps.

The Power of "You" continued on page 22

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By the summer of 1999, the Health Policy Committee began to lose faith that the rule proposed in 1997 would be finalized. However, APMA felt that the podiatric medical schools and residencies had made changes that would overcome Medicare's concerns, and the association made plans for more meetings with HCFA.

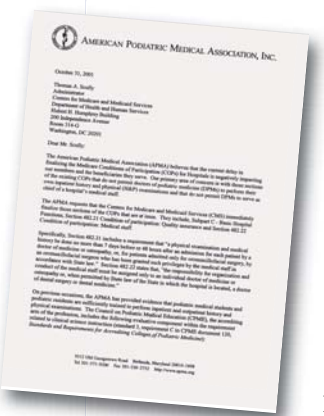
The following year in May, ACFAS asked its members to submit comments to JCAHO favoring changes to JCAHO standards that would clarify the right of DPMs to perform independent H&Ps.

That same day, APMA met with HCFA's Rachel Weinstein and her deputy Frank Emerson. APMA explained that the profession had addressed Medicare's principal concerns in 1992. CPME had strengthened H&P requirements for podiatric medical schools and residencies. Each school elaborated in its literature the nature of its H&P training. The National Board of Podiatric Medical Examiners made sure to include a meaningful component on diagnosis and H&Ps in its annual examination of clinical sciences.

"I probably went to CMS five different times on this issue," said Dr. Smith, who led the meeting in 2000.

APMA brought a statement from Alan Tinkleman, director of the Council on Podiatric Medical Education (CPME), to explain educational expectations for H&Ps. According to CPME Document 120, *Standards and Requirements for Accrediting Colleges of Podiatric Medicine,* one requirement of clinical science instruction "Ensures the attainment of knowledge, skills, and attitudes for the diagnosis and evaluation of the overall health status of the children and adults, leading to a determination about the relationship of the patient's health to pathology in the lower extremity." Since 1997, CPME had conducted on-site evaluations of each college of podiatric medicine, and no college had been found in noncompliance with that requirement. CPME Document 320, *Standards, Requirements and Guidelines for Approval of Residencies in Podiatric Medicine,* requires that the internal medicine rotations for podiatric medical residents include training opportunities in performing complete history and physical examinations. Following the meeting, APMA assembled supplementary supporting materials. The information included CPME college accreditation and residency approval standards and CPME 120 and 320. CMS referred to those documents in discussing the final rule published last November. APMA also included the favorable legal opinion from California.

> "THE FURTHER CLARIFICATION by JCAHO in 2000 made it even more clear, in their eyes, that DPMs should perform their own H&Ps," said ACFAS Executive Director J.C. "Chris" Mahaffey.



In November 2000, APMA received assurances that Medicare would discuss the H&P issue when it published a final rule.

JCAHO also clarified its standards in December of that year to recognize the ability of DPMs to perform independent H&Ps (Standard MS.6.2.2). Thus, hospitals that allowed DPMs to perform H&Ps would meet JCAHO standards, and, since hospitals that satisfy JCAHO criteria are deemed to meet Medicare standards, podiatric physicians had a loophole to go through. JCAHO accredited nearly 20,000 healthcare organizations, including hospitals, in the United States. Those entities were deemed to meet the Medicare CoPs. Far fewer facilities were actually surveyed by CMS.

"It is consistent with MS.6.2.2 for qualified, credentialed, and privileged Doctors of Podiatric Medicine to independently perform all or part of the inpatient admission medical history and physical examination, subject to applicable state law and the determination by the medical staff that high-risk patients require confirmation or endorsement of the history and physical by a qualified physician," JCAHO explained.

"The further clarification by JCAHO in 2000 made it even more clear, in their eyes, that DPMs should perform their own

The Power of "You" continued on page 24

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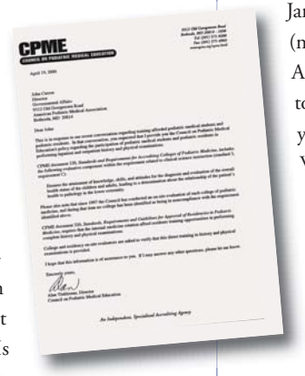
H&Ps," said ACFAS Executive Director J.C. "Chris" Mahaffey.

ACFAS had met twice with JCAHO on the topic. In June 2001, Charles M. Lombardi, DPM, surveyed ACFAS members to respond to a questionnaire from JCAHO about problems DPMs continued to experience with being allowed to perform inpatient and outpatient H&Ps.


CPME
COUNCIL ON PODIATRIC MEDICAL EDUCATION

"Every day we'd get a half-dozen calls [about H&Ps]," Mahaffey said. "It's the number-one issue. When the final rule was announced [in 2006], we probably had 300 calls and e-mails."

Also in June 2001, APMA requested another meeting with CMS, but the agency declined on the grounds that staff remained aware of APMA's concerns but had no new information to share. Despite a change in political leadership in the White House in 2001, the 1997 proposed rule languished.

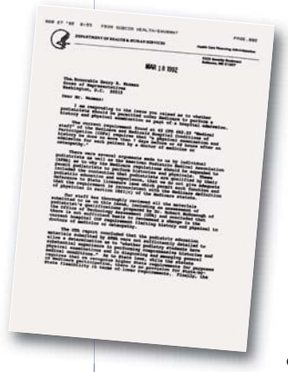
In September, in a note to the APMA Board of Trustees, Past President (1989) Eric R. Hubbard, DPM, recalled that the profession had been fighting Medicare over H&Ps for 25 years. Once chair of the Health Policy Committee, Dr. Hubbard had met with HCFA officials 20 years before and was promised that the regulations would be changing soon. By 2001, CMS was making the same promise to current committee members.

In June and then again in October, then-President (2000) Robert D. "Doug" Sowell, DPM, wrote to CMS Administrator Tom Scully, JD, requesting CMS finalize the 1997 provisions to allow DPMs perform H&Ps. CMS responded in January 2002 that prior meetings (most recently in 2000) with APMA were useful. "We would like to continue our open dialogue with your knowledgeable organization," Weinstein wrote on behalf of Scully, but she was not able to specify if or when a change would come.

ONCE CHAIR OF THE HEALTH POLICY COMMITTEE,

Dr. Hubbard had met with HCFA officials 20 years before and was promised that the regulations would be changing soon. By 2001, CMS was making the same promise to current committee members.

The Health Policy Committee decided to try once again to bring legislative pressure on CMS. Through the newly formed Legislative Committee, APMA asked select members of Congress to inquire when Medicare planned to change the CoPs. The Legislative Committee was certain that CMS would respond to lawmakers who wanted to see some action in the Medicare agency.



In 2002, APMA's Podiatric Practice Survey asked members about their experiences with H&P privileges. Only in North Dakota, Puerto Rico, Rhode Island, Washington, and Wyoming did 20 percent of podiatric physicians believe they could always perform independent H&Ps. Nearly 80 percent of respondents across the country believed they could never perform independent H&Ps. Two-thirds of the DPMs nationally also said an H&P by a podiatrist was not the only required exam for outpatient procedures.

In January 2002, CMS circulated a memo reminding regional and state officials of the H&P limitations. About a week later, then-APMA President-elect Viehe, in an e-mail exchange with Dr. Vogler about H&Ps, said any way ACFAS could help would be appreciated.

In April, APMA and CPMA met by conference call to discuss current options following a major article in *APMA News* by Dr. Smith and an article by CPMA general counsel C. Keith Greer, Esq., in the California component's newsletter. In his article, Dr. Smith described APMA efforts since the 1980s and explained the differences and implications of the JCAHO standards and the Medicare CoPs. "APMA has been, is, and will continue to actively address this issue," he concluded.

That month, at APMA's urging, U.S. Rep. J.D. Hayworth (R-AZ) wrote to Scully on behalf of several podiatrists from his state, asking CMS to make updating the CoPs a priority and expressing his concern about the antiquated sections of the CoPs that did not allow DPMs to perform H&Ps.

Also in April 2002, JCAHO again clarified that DPMs may perform outpatient H&Ps. "I am extremely proud that the American College of Foot and Ankle Surgeons was instrumental in having these issues clarified," wrote Robert G. Frykberg, DPM, then the president of ACFAS.

In May 2002, APMA gained a valuable advocate in William Rogers, MD, who was then special assistant to the CMS Administrator. Dr. Rogers, who would soon become part of the CMS Physician Regulatory Issues Team (PRIT), learned about the H&P issue at the May 3 joint national APMA Carrier Advisory Committee and Private Insurance Advisory Committee (CAC/PIAC) meeting, which brings together DPMs from around the country to hear and discuss the latest developments in carrier policies and procedures, both public and private. Three days later, Dr. Rogers wrote to APMA to say that he had been told that JCAHO standards precluded podiatric physicians from performing comprehensive H&Ps. APMA quickly corrected the information and communicated with Dr. Rogers frequently about resolving the H&P problem.

"We're fortunate due to APMA's persistence on the legislative side and some of our interpersonal relationships at CMS," Dr. Taubman said. "We knew we were right, and we had to convince a lot of other people we were right. Bill Rogers said we were right, and he promised four years ago that he'd solve this issue."

The Medicare bureaucracy moved slowly nonetheless. Scully responded to Rep. Hayworth in June: "The Centers for Medicare & Medicaid Services has had ongoing discussions with Dr. Sowell, the President of the American Podiatric Medical Association, Inc., and other podiatrists regarding these issues. Since we last corresponded with Dr. Sowell in a letter dated January 29, 2002, we have continued to work on the final rule. My staff has assured me they will consider the information Dr. Sowell has provided as they develop the final rule," Scully wrote.

In June 2002, The New Jersey Board of Medical Examiners affirmed the 1996 decision that DPMs may perform full medical histories and physicals. New Jersey relied on much material, including information from the American Board of Podiatric Orthopedics and Primary Podiatric Medicine (ABPOPPM), the American Board of Podiatric Surgery (ABPS), CPME's Joint Res-

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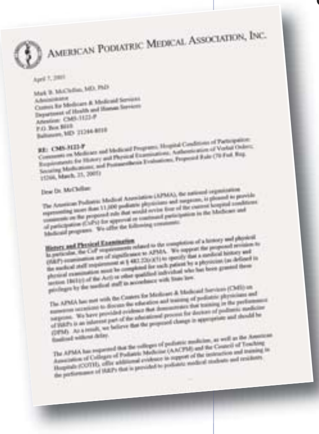
idency Review Committee (JRRC), and the Federation of Podiatric Medical Boards.

The APMA National Podiatric Medical Leadership Conference in March 2003 presented another opportunity for leaders from each state to lobby Congress specifically about the H&P issue. APMA representatives visited more than 200 Senators and Representatives, providing them with a draft letter to send to CMS urging the release of the CoPs to allow podiatric physicians to perform H&Ps.


AMERICAN PODIATRIC MEDICAL ASSOCIATION, INC.

Not only did Congress respond with letters and phone calls from Capitol Hill to CMS, but in July 2003, the House Committee on Appropriations, in a report accompanying the Department of Health and Human Services (HHS) annual appropriations bill, wrote, "The Committee encourages CMS to issue a final regulation adding doctors of podiatric medicine to the list of those who may provide a history and physical for patients admitted to a hospital if permitted by state law."

In December 2003, the PRIT added the H&P issue to the list of issues on its portion of the CMS Web site. In January 2004, then-APMA President J.D. Ferritto Jr., DPM, wrote to Dr. Rogers and the PRIT to assist in resolving the H&P issue.

The PRIT posted updates five times in the subsequent three years, most recently on May 9, 2006, which said: "The clearance process is very involved for changes to the Conditions of Participation. However, we are confident that the new CoP will be released late in 2006 or very early in 2007."

In September 2004, Dr. Rogers again addressed the CAC/PIAC meeting. "There's no objection within CMS to the CoPs, and we're going to solve it," he said.

Also in 2004, the Minnesota Podiatric Medical Association reached an agreement with the Minnesota Medical Association on state legislation to allow DPMs who completed a residency to do H&Ps on their surgical patients. Meanwhile, in October 2004, California's Department of Health Services began to waiver on DPMs performing H&Ps, sending ripples of concern through healthcare facilities in that state. The office issued a new interpretation of federal regulations that caused some hospitals to terminate H&P privileges for DPMs. But APMA members retained their resolve.

IN THE PROPOSED CHANGE, CMS credited APMA's efforts on the H&P issue.

In March 2005, CMS announced a proposed rule that would revise the CoPs. For the third time in 25 years, Medicare proposed relaxing its CoPs to allow DPMs to perform H&Ps. This time, CMS intended to expand the types of providers who may perform H&Ps to include all types defined as physicians in Section 1861(r) of the Social Security Act. This definition of physician includes DPMs.

In the proposed change, CMS credited APMA's efforts on the H&P issue. "We have received communications from the president of APMA and other podiatrists regarding their concerns that doctors of podiatric medicine are currently not permitted to perform a history and physical examination. This proposed rule addresses this concern as well."


MEDICAL BOARD OF CALIFORNIA
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The Health Policy Committee urged the membership to respond, and you did. CMS received responses from all corners of the podiatric medical profession. APMA submitted its official comments on behalf of the profession in April 2005.

"The APMA has met with . . . CMS on numerous occasions to discuss the education and training of podiatric physicians and surgeons. We have provided evidence that demonstrates that training in the performance of H&Ps is an inherent part of the educational process for . . . DPMs. As a result we believe that the proposed change is appropriate and should be finalized without delay," wrote APMA President Lloyd S. Smith, DPM.

The Health Policy Committee asked the podiatric medical schools, CPME, the Council on Teaching Hospitals (COTH), and the American Association of Colleges of Podiatric Medicine (AACPM) to provide additional evidence of the instruction and training provided to podiatric medical students and residents. CMS would later refer to that information in the final rule. APMA laid out its argument and erased any lingering doubt about the ability of podiatrists to perform independent H&Ps.

"We believe that this additional evidence reinforces that current training is sufficient for DPMs to perform their own H&Ps. Through time and a great deal of effort, the

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educational process for DPMs has evolved to its current state. For podiatric physicians and surgeons to continue to be denied the ability to perform their own H&Ps is inconsistent with their education and training, as well as inconsistent with current practice and the standards established by the . . . JCAHO. Thus, we urge CMS to immediately finalize this revised section of the CoPs," APMA explained.

Many individuals and organizations stepped up to offer comments and evidence to CMS. They included CPME, CPMA, Ohio College of Podiatric Medicine, Scholl College of Podiatric Medicine, California School of Podiatric Medicine, New York College of Podiatric Medicine, AACPM, COTH, California's Board of Podiatric Medicine, Texas State Board of Podiatric Medical Examiners, podiatrists and orthopedic surgeons from the Permanente Medical Group (the nation's largest medical group), and ACFAS.

"The completion of a medical history and physical examination is of great importance to the College and its members," wrote ACFAS President John J. Stienstra, DPM. "The H&P examination of patients is considered a standard of care component of clinical practice that was ingrained in our members throughout both their podiatric medicine and surgical residency training."

Later in the ACFAS comments, Dr. Stienstra explained Medicare's inconsistency with the JCAHO standards. "Due to the fact that many foot and ankle surgeons face significant difficulties within their hospital[s] because Medicare CoPs do not conform to the same standard and [are], in fact, inconsistent with JCAHO, the ACFAS believes the proposed change is proper and should be finalized as soon as possible."

Other important health policy bodies outside of the profession of podiatric medicine, such as the American Medical Association, the Medicare Payment Advisory Commission, and JCAHO, also commented on the rule but did not object to DPMs performing H&Ps. In its comments, which did not directly address the H&P practitioner issue, JCAHO noted that it evaluates and accredits nearly 16,000 healthcare organizations.

"Once these two bodies (JCAHO and CMS) are in sync with each other, we hope it will be blindingly obvious that DPMs have the right to do these tasks," Mahaffey said. "It's a huge step toward putting podiatrists and foot and ankle surgeons on a level playing field, and it chips away at differences in parity."

As the Health Policy Committee monitored other comments submitted, APMA learned that oromaxillofacial surgeons were objecting to the change en masse. The oral surgeons were worried that the new language, which no longer specified their ability to perform H&Ps, would allow hospitals to discriminate against them.

To counter the negative feedback, HPC coordinated a campaign in the final month of the comment period for DPMs to write to CMS individually in support of the revision. All parties shared a concern about being discriminated against due to their degrees.

Practically every member of the APMA Board of Trustees sent individual letters. Past presidents, members of the HOD, state executives and component leadership, and other APMA members answered the call.

"During the last six years, the College has worked closely with APMA, working through various contacts at various angles," Mahaffey said. "It became apparent this was going to happen. It was just a matter of time. When we'd submit letters, it was collaborative, to help each other's methodologies because we had the same cause."

When the dust settled, CMS reviewed the feedback. The Medicare agency received 609 timely comments on the proposed rule, including 342 comments specifically addressing who should be able to perform H&Ps. According to CMS, 48 percent of commentators supported the proposed change, and 52 percent opposed it. The supporting comments carried great weight and agreed with the direction CMS intended to go.

In the final rule published November 27, 2006, CMS reiterated its intention to expand the pool of professionals who may perform H&Ps and kept the 1861(r) definition of physician, but also retained the prior reference to oromaxillofacial surgeons to keep the mouth doctors from being left out. CMS specifically referenced APMA and podiatrists on several occasions, both in background and in discussion of comments on the proposed rule.

CMS wrote, "Podiatrists were in support of being permitted by regulation to perform H&Ps, stating that podiatric physicians are, by education and training, capable of performing a comprehensive H&P for any of their patients. Those commenting referenced their four-year educational requirements for podiatric [medical] students and the Council on Podiatric Medical Examination (CPME) publication 120, *Standards and Requirements for Accrediting Colleges of Podiatric Medicine* (April 2000) and CPME publication 320, Standards (July

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2003). Additionally, several commenters discussed how participation in the medicine and medical subspecialty training resources requires that podiatric residents perform a minimum number of comprehensive medical histories and physical examinations."

See **www.apma.org/H&Ps** for the complete text of the final rule published by CMS in the *Federal Register*.

Based on public comments, CMS relaxed the requirement that the H&P be performed by a practitioner credentialed and privileged at the admitting hospital. Instead, the requirement will be for the H&P to be performed by a physician "in accordance with state law and hospital policy."

As of January 26, 2007, Title 42, Chapter IV, Part 482.22(c)(5) of the U.S. Code of Federal Regulations will require hospital bylaws to ensure that "medical history and physical examination must be completed no more than 30 days before or 24 hours after admission for each patient by a physician (as defined in section 1861(r) of the Act), an oromaxillofacial surgeon, or other qualified individual in accordance with state law and hospital policy."

So thank you, APMA members. You are the college professors and residency directors who taught DPMs how to do H&Ps. You are the students and residents who learned. You are the practicing DPMs who actively seek credentials at your area hospitals. You are the practicing DPMs who treat your patients well and perform accurate histories and physicals for your patients who need to be treated in a hospital or other facility. You are board-certified members of CPME-recognized specialty colleges who have a great interest in treating your patients in hospitals. You belong to state components and related and affiliated organizations, where you vote for leaders who make the H&P issue a priority for APMA's House of Delegates and Board of Trustees. You answer the call for comments when the time is right. Over the course of 30 years, in many, many ways, you convinced the federal government of the importance and appropriateness of performing independent H&Ps for your patients. ■